

Emelia's Acrobatics,  
Gymnastics & Cheerleading,  
Petitioner  
ZRA 94

PLANNING BOARD OF

HOWARD COUNTY, MARYLAND

**MOTION:** To recommend denial of the proposal to amend Section 127.2.C.2 of the Zoning Regulations to add athletic centers as a permitted use in freestanding buildings in the CE Zoning District on lots which do not have frontage on Route 1 and which have a developable area with no portion within 1,000 feet of the Route 1 right-of-way.

**ACTION:** *Recommended denial of Petition; Vote 4 to 1.*

### RECOMMENDATION

On January 31, 2008, the Planning Board of Howard County, Maryland, considered the petition of Emelia's Acrobatics, Gymnastics & Cheerleading to amend Section 127.2.C.2 of the Zoning Regulations to add athletic centers as a permitted use in freestanding buildings in the CE zoning district on lots which do not have frontage on Route 1 and which have a developable area with no portion within 1,000 feet of the Route 1 right-of-way.

The petition, the Department of Planning and Zoning Technical Staff Report and Recommendation were presented to the Board for its consideration. The Department of Planning and Zoning recommended that the Petitioner's request be denied.

The Petitioner was represented by Sang Oh, Esq. No one appeared in opposition to the petition. Mr. Oh said the property for which the amendment is being requested is located in the Maier Road Industrial Park and was zoned M-2 prior to comprehensive rezoning. He said that about 1,000 acres of land had been rezoned from M-1 and M-2 to the new classifications which resulted in M-1 and M-2 properties becoming very expensive. He said that in comparing the lists of uses permitted in M-1 and M-2 with those permitted in CE, it is evident that many uses were struck out from M-1 and M-2 without a strong rationale. Mr. Oh said that there are other uses in the CE zone that aren't necessarily professional/office type uses and the proposal is consistent with other uses allowed in the CE district such as day care centers. He explained that there is a distinction between properties with frontage on US 1 and those that do not have frontage in terms of the enhanced streetscape appearance of properties with frontage. He said that properties that are located 1,000 feet from US 1 would not negatively impact the streetscape improvement goals of the county. He said that adding this use to the CE zone would not be detrimental to the county goals of combining parcels of land for redevelopment purposes.

3 Mr. Oh said the proposed use would provide a needed service for residents and would not frustrate  
4 the purpose of the CE zone. He said the proposal has limitations pertaining to frontage which makes it more  
5 restrictive than if it was included in the by-right list of uses. He said the Zoning Regulation Amendment is a  
6 legitimate tool for change and there is not enough acreage involved to cause a change in policy. Mr. Oh  
7 reiterated that frontage on US 1 is key and that is why the proposal that properties have no developable  
8 portion within 1,000 feet of US 1 makes such a difference.

8 **Motion:**

9 Ramsey Alexander made a motion to accept the recommendation of the DPZ Technical Staff  
10 Report. Gary Rosenbaum seconded the motion.

11 **Discussion:**

12 The Planning Board supports the Technical Staff Report Evaluation and Conclusions that:

13 **"While one purpose of the CE District is as stated above, the overarching purpose of**  
14 **the District is to provide for new office, flex space and other business/employment related**  
15 **uses that advance the County's economic development goals. The overall intended purpose**  
16 **of the CE District is as an employment area which would provide well paying jobs in the**  
17 **business sector rather than recreation or leisure related activities. The proposed use does not**  
18 **support this main purpose.**

19 **Athletic centers, health clubs, tennis clubs and similar uses are permitted in multi-**  
20 **story office, hotel or parking structures provided certain requirements for a minimum**  
21 **number of building stories and limits on maximum square footage are met. These uses are**  
22 **permitted with the noted limitations because they are intended as support/accessory uses to**  
23 **the primary office/flex use for employees which is harmonious with the main employment**  
24 **center purpose of the CE District.**

25 **Land use goals for the CE District noted in the Route 1 Manual (p. 8) encourage land**  
26 **assembly by allowing some freestanding commercial uses for redevelopment projects that**  
27 **exceed 20 acres."**

28 The Petitioner did not present sufficient explanation or compelling evidence to support why  
their request should not go through the change or mistake process required for a zoning map change. In  
this situation, it is clear that the Petitioner is seeking to amend the law to fit their clients need and not  
necessarily because a mistake occurred in the last Comprehensive zoning, or that the CE district is  
failing to serve the purpose for which it was created. The CE zone was not created on a whim or  
without much thought and planning. It went through a rigorous process which was ultimately approved  
by DPZ, the Planning Board and the County Council.

This zoning category is relatively new and there has not been an adequate passage of time to  
allow a reasonable opportunity for the CE zoning district to be properly implemented. Furthermore,  
this text amendment presents the possibility that M-1 and M-2 uses could be reintroduced onto the

Page 3

Emelia's Acrobatics, Gymnastics & Cheerleading, Petitioner

Route 1 corridor in areas where the County purposefully worked to eliminate such uses.

The Planning Board does not support the requested text amendment and believes that the Petitioner should have submitted their request in accordance with the rules governing a zoning map change. To do otherwise under these circumstances would circumvent the established process which is designed to maintain predictability and stability in the land use process.

**Vote:**

The Board voted 4 to 1 to deny the Petition in accordance with the DPZ Technical Staff Report recommendation of denial of the requested text amendment. Ms. Dombrowski voted in opposition to the majority recommendation and has issued a written dissenting opinion attached to this recommendation.

For the foregoing reasons, the Planning Board of Howard County, Maryland, on this 29<sup>th</sup> day of February, 2008, recommends that the Petitioner's request to amend section 127.2.C.2 of the Zoning Regulations to add athletic centers as a permitted use in freestanding buildings in the CE Zoning District on lots which do not have frontage on Route 1 and which have a developable area with no portion within 1,000 feet of the Route 1 right-of-way, be **DENIED** for the reasons stated above and in accordance with the recommendation of the DPZ Technical Staff Report.

HOWARD COUNTY PLANNING BOARD

*Tammy J. Citaristinis / SK*  
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Tammy J. Citaristinis, Chairperson

*David Grabowski / SK*  
\_\_\_\_\_  
David Grabowski, Vice-Chairperson

*Ramsey Alexander Jr. / SK*  
\_\_\_\_\_  
Ramsey Alexander, Jr.

Oppose – Dissent Opinion attached  
\_\_\_\_\_  
Linda A. Dombrowski

*Gary Rosenbaum / SK*  
\_\_\_\_\_  
Gary Rosenbaum

ATTEST:

*Marsha S. McLaughlin*  
\_\_\_\_\_  
Marsha S. McLaughlin  
Executive Secretary

**Dissenting Opinion by Planning Board Member, Linda Dombrowski: Expanding the list of permitted uses for the CE zone to include athletic centers with the petitioner's stipulations should be approved.**

The CE zone was created along with the CAC and TOD during the 2004 Comprehensive Zoning process to revitalize the Rt.1 corridor via the findings of the Rt. 1 taskforce. When presented, concerns were raised with the dramatic change in use away from affordable housing and lower scale, non-office uses. To assess the likelihood of success, staff was asked whether the zones were in use in jurisdictions in or out of Maryland and how permitted uses were selected. Staff stated they had not benchmarked with other jurisdictions and that the designated uses list came from eliminating any use deemed not complying with the Rt. 1 vision. Staff used no specific criteria such as trip generation, co-locatable potential uses; etc for selecting/eliminating uses had been established.

The uncertainty and newness of the Rt.1 zones caused Planning Board to recommend there would be a need to evaluate the zones usefulness and workability to assess whether changes would be necessary. Typically changes to a zone occur via text amendments to the zoning regulations. Changes would result from developer/owner feedback pertaining to projects' viability and market demand. At no time was a moratorium on zoning amendments approved or discussed as necessary to allow time for the zones to work.

The petitioner's amendment for athletic centers does as much as possible to protect the integrity of the CE zone. The stipulations reduce the likelihood of a proliferation of athletic centers. Additional stipulations for minimum and maximum parcel size could provide additional protection.

Athletic centers (health clubs, tennis clubs and similar uses) are already permitted but within a building. DPZ presented no rationale as to why a stand alone facility compromises the zone's integrity. Stand alone athletic centers are a compatible use. They retain residential quality of life services to those in the surrounding communities, generate traffic that peaks at different times than the office uses, and allow the zone to be active after 5 pm and on the weekends. Stand alone Athletic Centers may generate similar non-office use patterns as ambulatory health centers, daycare centers, religious activities, and schools.

Even if permitted, any stand alone athletic center would have to conform to architectural requirements, designed to protect the zone, which would allow the structure to blend in with the area.

I disagree with the Planning Board assertion that the petitioner use change or mistake instead of the policy tool of regulatory amendments to meet their needs. When created, no moratorium or prohibitions on amendments were placed on the CE zone. In this case, change and mistake can not be used to change the parcel. Change can not be proven because the area is still primarily M-1 with pending uses aligned with CE. No parcel has fully converted to CE uses. Mistake can not be proven because it would require proving that DPZ erred in developing the list of permitted uses. Requiring this approach unfairly eliminates a practical and legitimate policy tool that anyone is entitled to use.

A concern that approval may lead to other amendments requesting changes to the CE zone was voiced. I do not believe its approval would necessarily be a signal to developers that any change would be recommended. Even if additional amendments came forward, each would have to be evaluated on its merits, allowing some but not others.

Respectfully submitted,

Linda A. Dombrowski